

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

TIMMY DALE WHITAKER

PETITIONER

V.

CIVIL ACTION NO.: 1:16CV140-GHD-SAA

**JIM HOOD and
JACQULINE BANKS**

RESPONDENTS

**ORDER TRANSFERRING CASE TO THE
FIFTH CIRCUIT COURT OF APPEALS**

This matter comes before the Court, *sua sponte*, for consideration of the transfer of this cause. Timmy Dale Whitaker has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the 2010 convictions and sentences for burglary of a dwelling and aggravated assault that he received in the Circuit Court of Alcorn County, Mississippi.

Whitaker has filed at least one other unsuccessful § 2254 motion concerning the same sentence he seeks to challenge in this action. *See, e.g., Whitaker v. Mississippi*, No. 1:13cv242-GHD-JMV (N.D. Miss.). The Antiterrorism and Effective Death Penalty Act requires that an applicant seeking to file a second or successive petition first “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Whitaker has not obtained such an order. Rather than dismissing the petition on this basis, the Fifth Circuit has allowed district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and (b)(3)(C). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997). Therefore, in the interest of justice and judicial economy, it is hereby **ORDERED**:

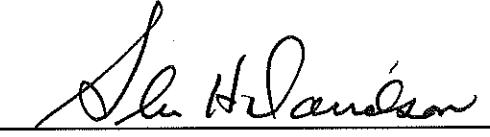
- 1) That this petition shall be transferred to the Fifth Circuit Court of Appeals for the

petitioner to seek permission to file this successive § 2254 petition;

2) That the Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(C), and *In re Epps*, 127 F.3d at 365; and

3) That this case is **CLOSED**.

THIS the 18th day of August, 2016.


Sherry H. Johnson
SENIOR U.S. DISTRICT JUDGE